रजिस्ट्री सं० डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 13] नई दिल्ली, मंगलवार, जनवरी 20, 1976/पौष 30, 1897
No. 13] NEW DELHI, TUESDAY, JANUARY 20, 1976/PAUSA 30, 1897

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 20th January, 1976:—

BILL No. 22 OF 1976

A Bill further to amend the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976.

(2) It shall be deemed to have come into force on the 12th day of December, 1975.

Amendment of section 9.

52 of 1974.

2. In section 9 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the principal Act), in sub-section (*1*), for the words, figures and letters "the 31st day of December, 1975", the words, figures and letters "the 31st day of December, 1977" shall be substituted.

Temporary amendments.

3. During the period when the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971 and the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, are both in operation, the principal Act shall have effect subject to the modifications that—

(*1*) in section 10—

(*a*) for the words "one year from the date of detention", the words "a period of one year from the date of detention or the specified period, whichever period expires later," shall be substituted;

(*b*) for the words "two years from the date of detention:", the words "a period of two years from the date of detention or the specified period, whichever period expires later:" shall be substituted;

(*c*) the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—In this section and in section 10A, "specified period" means the period during which the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971 and the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, are both in operation.';

(*2*) after section 10, the following section shall be inserted, namely:—

Extension of period of detention.

"10A. (*1*) Notwithstanding anything contained in any other provision of this Act, the detention of every person detained under a detention order which has been confirmed under clause (*f*) of section 8 before the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976, and which is in force immediately before such commencement shall, unless his detention has been continued by the appropriate Government under the said clause for a period shorter than one year from the date of his detention, continue until the expiry of a period of one year from the date of his detention under such order or until the expiry of the specified period, whichever period expires later:

Provided that nothing contained in this sub-section shall affect the power of the appropriate Government to revoke or modify such detention order at any earlier time.

(*2*) Notwithstanding anything contained in any other provision of this Act, the detention of every person detained under a detention order which has been confirmed under clause (*f*) of section 8 read with sub-section (*2*) of section 9 before the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976, and which is in force immediately before such commencement, shall, unless his detention has been continued by the appropriate Government under the said clause (*f*) read with the said sub-section (*2*), for a period shorter than two years from the date of his detention, continue until the expiry of a period of two years from the date of his detention under such order or until the expiry of the specified period, whichever period expires later:

Provided that nothing contained in this sub-section shall affect the power of the appropriate Government to revoke or modify such detention order at any earlier time.".

Amendment of section 12.

4. In section 12 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) The Central Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or an officer subordinate to that Government or by a State Government or by an officer subordinate to a State Government, may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(*1A*) A State Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or by an officer subordinate to that Government may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.";

(*b*) in sub-section (*2*), for the words, brackets and figure "under sub-section (*1*), the appropriate Government", the words, brackets, figures and letter "under sub-section (*1*) or sub-section (*1A*), the Government directing the release" shall be substituted.

(*c*) in sub-sections (*3*) and (*5*), for the word, brackets and figure "sub-section (*1*)", the words, brackets, figures and letter "sub-section (*1*) or sub-section (*1A*)" shall be substituted.

Repeal and saving.

29 of 1975.

5. (*1*) The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Second Amendment) Ordinance, 1975 is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended and modified by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended and modified by this Act.

STATEMENT OF OBJECTS AND REASONS

The provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 have had a salutary effect and have been very useful in combating smuggling. However, for maintaining the results achieved and for making the provisions of the Act more effective, it became urgently necessary towards the end of last year to modify the maximum periods of detention provided under the Act and to secure for a further period of two years the availability of the special provisions of section 9 of the Act relating to smuggling operations in areas highly vulnerable to smuggling. Hence the President promulgated on the 12th December, 1975 the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Second Amendment) Ordinance, 1975.

2. The Ordinance amended section 9 of the principal Act to make the provisions of the section applicable in respect of persons ordered to be detained before the 31st December, 1977. The Ordinance also modified the maximum periods of detention provided in section 10 of the Act so as to provide that so long as the Proclamations of Emergency issued on the 3rd December, 1971 and the 25th June, 1975 are both in operation, the maximum period shall be as originally provided in that section or the period during which both the aforementioned Proclamations are in operation, whichever is later. The Ordinance also made a special provision for continuing the detention of persons already ordered to be detained for the maximum periods as originally provided in the Act.

3. In addition to replacing the Ordinance, the Bill seeks to amend section 12 of the principal Act so that the Central Government can also have power to order the temporary release of persons detained under orders of a State Government or State Government officer.

NEW DELHI;
The 9th January, 1976

PRANAB MUKHERJEE

MEMORANDUM EXPLAINING THE MODIFICATIONS CONTAINED IN THE BILL TO REPLACE THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES (SECOND AMENDMENT) ORDINANCE, 1975.

In addition to replacing the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Second Amendment) Ordinance, 1975, the Bill seeks (*vide* clause 4) to amend section 12 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 so that the Central Government can also have the power to order the temporary release of a person detained under an order of a State Government or a State Government officer.

BILL NO. 18 OF 1976

A Bill further to amend the Maintenance of Internal-Security Act, 1971.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Maintenance of Internal Security (Amendment) Act, 1976.

Amendment of section 3.

2. In section 3 of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as the principal Act), in sub-section (3), for the words "twelve days" at both the places where they occur, the words "twenty days", and for the words "twenty-two days", the words "twenty-five days", shall be substituted, and shall be deemed to have been substituted with effect from the 25th day of June, 1975. 26 of 1971.

Amendment of section 14.

3. In section 14 of the principal Act, for sub-section (2), the following sub-section shall be substituted, and shall be deemed to have been substituted with effect from the 29th day of June, 1975, namely:—

"(2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order or the expiry of the Defence and Internal Security of India Act, 1971, whichever is later.". 42 of 1971.

Amendment of section 16A.

4. In section 16A of the principal Act,—

(*a*) after sub-section (*2*), the following sub-section shall be inserted, and shall be deemed to have been inserted with effect from the 29th day of June, 1975, namely:—

"(*2A*) If the State Government makes a declaration under sub-section (*2*) that the detention of any person in respect of whom a detention order is made by an officer subordinate to that Government is necessary for dealing effectively with the emergency, the State Government shall be deemed to have approved such detention order and the provisions of sub-section (*3*) of section 3, in so far as they relate to the approval of the State Government, and of sub-section (*4*) of that section, shall not apply to such detention order.";

(*b*) for sub-section (*5*), the following sub-section shall be substituted, and shall be deemed to have been substituted with effect from the 29th day of June, 1975, namely:—

"(*5*) In making any review, consideration or reconsideration under sub-section (*2*), sub-section (*3*) or sub-section (*4*), the appropriate Government or officer may act on the basis of the information and materials in its or his possession without communicating or disclosing any such information or materials to the person concerned or affording him any opportunity of making any representation against the making under sub-section (*2*), or the making or confirming under sub-section (*3*), or the non-revocation under sub-section (*4*), of the declaration in respect of him.";

(*c*) in sub-section (*7*), in clause (*i*),—

(*i*) in the opening portion, for the words "the following sub-section", the words "the following" shall be substituted, and shall be deemed to have been substituted with effect from the 29th day of June, 1975;

(*ii*) in sub-section (*3*), as substituted by that clause, for the words "forward to the Central Government a report in respect of the order", the words "report the fact to the Central Government" shall be substituted, and shall be deemed to have been substituted with effect from the 29th day of June, 1975;

(*iii*) after sub-section (*3*) aforesaid, the following shall be inserted, and shall be deemed to have been inserted with effect from the 17th day of October, 1975, namely:—

"(*4*) At any time after the receipt of a report under sub-section (*3*), the Central Government may require the State Government to furnish to the Central Government the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.";

(*d*) after sub-section (*7*), the following sub-sections shall be inserted, and shall be deemed to have been inserted with effect from the 29th day of June, 1975, namely:—

"(*8*) In the case of any person in respect of whom a declaration has been made by a State Government under sub-

section (2) or a declaration has been made by a State Government or an officer subordinate to it or confirmed by the State Government under sub-section (3), or a declaration has not been revoked by a State Government under sub-section (4), the Central Government may, whenever it considers it necessary so to do, require the State Government to furnish to the Central Government the information and materials on the basis of which such declaration has been made or confirmed, or not revoked, as the case may be, and such other information and materials as the Central Government may deem necessary.

(9) Notwithstanding anything contained in any other law or any rule having the force of law,—

(a) the grounds on which an order of detention is made or purported to be made under section 3 against any person in respect of whom a declaration is made under sub-section (2) or sub-section (3) and any information or materials on which such grounds or a declaration under sub-section (2) or a declaration or confirmation under sub-section (3) or the non-revocation under sub-section (4) of a declaration are based, shall be treated as confidential and shall be deemed to refer to matters of State and to be against the public interest to disclose and save as otherwise provided in this Act, no one shall communicate or disclose any such ground, information or material or any document containing such ground, information or material;

(b) no person against whom an order of detention is made or purported to be made under section 3 shall be entitled to the communication or disclosure of any such ground, information or material as is referred to in clause (a) or the production to him of any document containing such ground, information or material.".

Amendment of section 18.

5. In section 18 of the principal Act, for the words "detained under this Act", the words and figure "in respect of whom an order is made or purported to be made under section 3" shall be substituted, and shall be deemed to have been substituted with effect from the 25th day of June, 1975.

Validation.

6. Any act or thing done or purporting to have been done, before the 16th day of November, 1975, under the principal Act in respect of any person against whom an order of detention was made under that Act on or after the 25th day of June, 1975 or in respect of any such order of detention shall, for all purposes, be deemed to be as valid and effective as if the amendments made to the principal Act by sections 2 and 3, and clause (a) of section 4, of this Act had been in force at all material times.

Repeal and saving.

7. (1) The Maintenance of Internal Security (Third Amendment) Ordinance, 1975, and the Maintenance of Internal Security (Fourth Amendment) Ordinance, 1975, are hereby repealed. 16 of 1975

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinances shall be deemed to have been done or taken under the Principal Act as amended by this Act. 22 of 1975

STATEMENT OF OBJECTS AND REASONS

The Maintenance of Internal Security (Third Amendment) Ordinance, 1975, and the Maintenance of Internal Security (Fourth Amendment) Ordinance, 1975, were promulgated on the 16th October, 1975, and the 17th November, 1975, respectively, to remove certain difficulties in the administration of section 16A and other special provisions of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as the principal Act) relating to detentions for dealing effectively with the emergency.

2. It has been the policy of the Government that to effectively meet the emergency, information, materials and grounds on the basis of which detention had been made should not be disclosed as it would prejudice the larger interests of the State. To avoid such disclosure, special provisions were made in sub-sections (5), (6) and (7) of section 16A of the principal Act. It was noticed that in some cases attempts were made to defeat the above objective by seeking the assistance of the courts to require the detaining authority to produce, such grounds, information and materials. To make it clear that in the interests of the State the grounds of detention as also the information and material on which the declaration is based should not be required to be disclosed, the Maintenance of Internal Security (Third Amendment) Ordinance was promulgated. It retrospectively substituted a new sub-section for sub-section (5) of section 16A and also inserted a new sub-section (9) in the section to provide expressly that the grounds of detention of a person in respect of whom a declaration is made under the section and the information and material on which such declaration is based should be deemed to be matters of State and to be against public interest to disclose and that no detenu shall be entitled to the communication or disclosure of any such ground, information or material. The opportunity was availed of to take power for the Central Government to elicit the necessary information from State Governments for exercising its power of revocation of orders of detention effectively.

3. Sub-section (3) of section 3 of the principal Act provides that when an order of detention is made by an officer of the State Government, the order ceases to have effect on the expiry of twelve days unless in the meantime it has been approved by the State Government. In the case of certain orders of detention made by such officers between the 25th June, 1975, and the 29th June, 1975, under the mistaken belief that a declaration under section 16A(2) in respect of persons detained was sufficient, the State Governments concerned had not approved the orders of detention as required by sub-section (3) of section 3. To rectify the defects in such orders and validate the orders, the Maintenance of Internal Security (Fourth Amendment) Ordinance, 1975, was promulgated. The Ordinance retrospectively amended section 3(3) and inserted a new sub-section (2A) in section 16A. By amendment of section 3(3), the period prescribed for compliance of the requirement was increased and new sub-section (2A) of section 16A provided that the

declaration made by a State Government under section 16A(2) would be deemed to be approval of the relevant detention order under the provisions of sub-section (3) of section 3 of the principal Act. The Ordinance also amended retrospectively section 14 of the principal Act to provide that sub-section (2) of the section is applicable also to cases of expiry of detention orders and to make it clear that the power to make a fresh order of detention on the expiry or revocation of a detention order under the sub-section cannot be used to detain a person for a period longer than the maximum period authorised by the principal Act.

4. The Bill seeks to replace the aforementioned two Ordinances. The opportunity is being taken to make an amendment of a clarifying nature in section 18 of the principal Act.

NEW DELHI;

The 15th January, 1976.

K. BRAHMANANDA REDDI.

Memorandum explaining the modifications contained in the Bill to replace the Maintenance of Internal Security (Third Amendment) Ordinance, 1975 and the Maintenance of Internal Security (Fourth Amendment) Ordinance, 1975.

Apart from changes of a formal, drafting or consequential nature, the Bill contains the following modifications:—

(1) New sub-section (9) as inserted in section 16A of the principal Act by section 2(c) of the maintenance of Internal Security (Third Amendment) Ordinance, 1975 refers to an order of detention made under sub-section (1) of section (3) of the Act. The sub-section has been modified to make it clear that the reference is to an order of detention made or purported to be made under the said section 3.

(2) The Bill also seeks to amend section 18 of the principal Act to make it clear that the provisions of the section apply to persons in respect of whom orders are made or purported to be made under section 3 of the principal Act.

S. L. SHAKDHER,
Secretary-General.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI. 1976